

Exhibit D

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to Plaintiff's Memorandum In Support of United States' Motion
In Limine Regarding Testimony of Raymond C. Winter and
Sequencing of Deposition Testimony

1 NO. GV002327
 THE STATE OF TEXAS) IN THE DISTRICT COURT
 2 EX REL.)
 VEN-A-CARE OF THE)
 3 FLORIDA KEYS, INC.,)
 PLAINTIFF(S),)
 4)
 VS.) TRAVIS COUNTY, TEXAS
 5)
 DEY, INC.; ROXANE)
 6 LABORATORIES, INC., WARRICK)
 PHARMACEUTICALS CORPORATION,)
 7 SCHERING-PLOUGH CORPORATION,)
 AND SCHERING CORPORATION,)
 8 DEFENDANT(S).) 53RD JUDICIAL DISTRICT

9 *****

10 ORAL AND VIDEOTAPED DEPOSITION OF

11 ROBERT FRANCIS MOZAK

12 NOVEMBER 6TH, 2002

13 VOLUME 3

14 *****

15
 16 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT FRANCIS
 17 MOZAK, PRODUCED AS A WITNESS AT THE INSTANCE OF THE
 18 PLAINTIFF(S), AND DULY SWORN, WAS TAKEN IN THE
 19 ABOVE-STYLED AND NUMBERED CAUSE ON NOVEMBER 6TH, 2002,
 20 FROM 9:11 A.M. TO 5:01 P.M., BEFORE CYNTHIA VOHLKEN,
 21 CSR IN AND FOR THE STATE OF TEXAS, REPORTED BY MACHINE
 22 SHORTHAND, AT THE OFFICES OF COUDERT BROTHERS, 600
 23 BEACH STREET, SAN FRANCISCO, CALIFORNIA PURSUANT TO
 24 THE TEXAS RULES OF CIVIL PROCEDURE.
 25

A P P E A R A N C E S

FOR THE PLAINTIFF(S) :

MR. PATRICK J. O'CONNELL
MR. RAYMOND C. WINTER
MS. CYNTHIA O'KEEFFE
OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS
POST OFFICE BOX 12548
AUSTIN, TEXAS 78711-2548

FOR THE RELATOR:

MR. JAMES JOSEPH BREEN
THE BREEN LAW FIRM, P.A.
P. O. BOX 297470
PEMBROKE PINES, FLORIDA 33029-7470

-AND-

MR. FRANK M. PITRE
COTCHETT, PITRE, SIMON & MCCARTHY
840 MALCOLM ROAD, SUITE 200
BURLINGAME, CALIFORNIA 94010

FOR THE DEFENDANT(S) DEY, INC.:

MR. STEPHEN M. HUDSPETH
COUDERT BROTHERS
1114 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-7703

-AND-

MR. STEVEN A. FLECKMAN
FLECKMAN & MCGLYNN, P.L.L.C.
515 CONGRESS, SUITE 1800
AUSTIN, TEXAS 78701-3503

FOR THE DEFENDANT ROXANE LABORATORIES, INC.:

MR. R. ERIC HAGENSWOLD
SCOTT, DOUGLASS & MCCONNICO, L.L.P.
ONE AMERICAN CENTER, FIFTEENTH FLOOR
600 CONGRESS AVENUE
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1 FOR THE DEFENDANT WARRICK PHARMACEUTICALS CORPORATION,
2 SCHERING-PLOUGH CORPORATION AND SCHERING CORPORATION:

3 MS. KARIN B. TORGERSON
4 LOCKE LIDDELL & SAPP, LLP
5 2200 ROSS AVENUE, SUITE 2200
6 DALLAS, TEXAS 75201-6776

7 FOR THE WITNESS ROBERT MOZAK:

8 MR. MARTIN F. GAYNOR, III
9 COOLEY MANION JONES LLP
10 21 CUSTOM HOUSE STREET
11 BOSTON, MASSACHUSETTS 02110-3536

12 ALSO PRESENT:

13 MR. THOMAS A. TEMMERMAN,
14 CALIFORNIA OFFICE OF THE
15 ATTORNEY GENERAL
16 MR. ZACHARY TAYLOR BENTLEY, II
17 MS. ANNE ARNOLD
18 MR. BRIAN BOBBITT, VIDEOGRAPHER
19
20
21
22
23
24
25

1 A FACT WITNESS HERE TODAY.

2 IF YOU HAVE A DOCUMENT YOU WANT TO SHOW

3 HIM ABOUT THE COMPANY AND LAY A PROPER FOUNDATION THEN

4 I'LL RECONSIDER MY INSTRUCTION. FOR NOW IT STANDS.

5 MR. WINTER: THAT'S FINE. WE'LL COME UP

6 WITH ANOTHER QUESTION THAT'S PERHAPS BETTER.

7 Q. (BY MR. WINTER) MR. MOZAK, I WOULD LIKE TO

8 DRAW YOUR ATTENTION NOW TO A DOCUMENT THAT WAS

9 INTRODUCED AT ONE OF YOUR PRIOR DEPOSITIONS AND IT'S

10 BEEN INDICATED HERE AS EXHIBIT 72.

11 A. UH-HUH.

12 Q. DO YOU RECALL THAT EXHIBIT?

13 A. YES, SIR.

14 Q. OKAY. AND DO YOU RECALL THAT WHEN MR. BREEN

15 AND I BELIEVE MYSELF AS WELL ASKED YOU QUESTIONS ABOUT

16 THIS DOCUMENT LAST YEAR, NOVEMBER OF 2001, YOU

17 INDICATED TO US THAT ONE OF THE REASONS WHY YOU

18 BELIEVE THAT EXHIBIT HAD BEEN PREPARED, THAT

19 MEMORANDUM HAD BEEN PREPARED BY MS. BURNHAM, WAS

20 BECAUSE SHE WAS CONCERNED ABOUT A SITUATION IN

21 FLORIDA. DO YOU RECALL GENERALLY THOSE DISCUSSIONS?

22 A. NO, I DON'T RECALL THAT.

23 Q. YOU DON'T? OKAY. WELL, LET ME ASK YOU.

24 WHAT IS YOUR UNDERSTANDING AS TO WHY MS. BURNHAM

25 PREPARED THAT MEMORANDUM WHICH IS AT EXHIBIT 72?

1 A. I REALLY DON'T KNOW WHY SHE PREPARED THIS
2 MEMO AND SENT IT OUT. I WASN'T AWARE OF IT AT THE
3 TIME AND I DIDN'T BECOME AWARE OF IT UNTIL QUITE SOME
4 TIME AFTER THAT. THE ONLY -- THE ONLY -- MY ONLY
5 UNDERSTANDING OF -- OF -- OF THE TIME FRAME, SO TO
6 SPEAK, IS THIS WAS -- THIS WAS A TIME WHEN SOME OF OUR
7 SALES REPS WERE CONCERNED ABOUT THE WAC AND THAT WAS
8 NOTED BY WARRICK AND THAT, OF COURSE, WAS DEMONSTRATED
9 BY SOME -- SOME OF OUR REPS CALLING ON THE STATES
10 DIRECTLY. AND I DON'T KNOW WHETHER THAT HAD ANY
11 MOTIVATION AT ALL AS TO WHETHER -- WHY SHE WROTE THIS
12 MEMO, BUT THAT WOULD BE MY ONLY RECOLLECTION OF,
13 QUOTE, THE TIME FRAME.

14 Q. SO YOU DON'T RECALL DISCUSSING A SITUATION IN
15 FLORIDA IN YOUR DEPOSITION LAST NOVEMBER?

16 A. YEAH. THAT'S WHAT I WAS JUST REFERRING TO.
17 THERE WAS A SITUATION THAT OCCURRED IN FLORIDA THAT --
18 WHERE ONE OF OUR REPS WENT TO THE STATE OF FLORIDA TO
19 SO TO SPEAK BRING UP THE WAC ISSUE, THE WARRICK WAC
20 ISSUE, WITH THE STATE OF FLORIDA AND TRY TO INFORM THE
21 STATE THAT THE WAC WAS EXCESSIVE AND -- AND REALLY GOT
22 NO -- NO SATISFACTION FROM THE STATE.

23 Q. AND WHO WAS THE REPRESENTATIVE IN FLORIDA?

24 A. I BELIEVE THAT WAS ROSS UHL.

25 Q. AND DO YOU KNOW HOW MR. UHL CAME TO THE

1 YOU TOLD US IN NOVEMBER OF LAST YEAR

2 THAT YOU DID NOT KNOW ABOUT THIS ACTION THAT'S

3 MANIFEST ON THIS EXHIBIT 72 AT THE TIME?

4 A. YES, SIR.

5 Q. AND WHEN YOU SAY AT THE TIME DO YOU MEAN YOU

6 DID NOT KNOW ABOUT THIS ON MAY 30TH, 1995?

7 A. YES, SIR.

8 Q. AND I THINK YOU SAID THAT AGAIN TODAY A

9 MOMENT AGO.

10 A. YES, SIR.

11 Q. WHEN DID YOU DISCOVER THAT THIS ACTION HAD

12 BEEN TAKEN?

13 A. MY FIRST RECOLLECTION OF SEEING THIS MEMO WAS

14 WHEN WE WERE PRODUCING DOCUMENTS FOR DISCOVERY, WHICH

15 WOULD HAVE BEEN -- I CAN'T GIVE YOU THE EXACT DATE.

16 IT WOULD HAVE BEEN SEVERAL YEARS LATER.

17 Q. THAT'S WHEN YOU FIRST SAW THE MEMORANDUM?

18 A. YES, SIR.

19 Q. OKAY. NOW, IN YOUR MIND DO YOU DISTINGUISH

20 BETWEEN SEEING THE MEMORANDUM ON THE ONE HAND AND

21 BEING AWARE THAT ACTION WAS TAKEN TO RAISE THE WAC ON

22 THE OTHER HAND?

23 A. NO, SIR, I DON'T DISTINGUISH BETWEEN THE TWO.

24 Q. OKAY. SO IS IT YOUR TESTIMONY THAT THE FIRST

25 TIME THAT YOU KNEW THAT THE WAC HAD BEEN RAISED WAS

1 WHEN YOU SAW THAT DOCUMENT IN PREPARATION OF DOCUMENT
2 PRODUCTION IN CONNECTION WITH THIS LAWSUIT OR ANOTHER
3 LAWSUIT?

4 MR. HUDSPETH: OBJECTION, FORM.

5 A. WELL, I WOULD HAVE -- I WOULD HAVE BECOME
6 AWARE OF IT IN DECEMBER OF '95 WHEN WE WERE PRODUCING
7 A NEW PRICE PAGE FOR THE INTRODUCTION OF A -- OF A NEW
8 PRODUCT. I THINK IT WAS ALBUTEROL MDI. AND OUR
9 NORMAL PROCEDURE AT THAT POINT IN TIME WOULD BE TO
10 SEND AROUND A PRICE PAGE WHICH WOULD HAVE -- ALL OF
11 THE PRICES WOULD HAVE BEEN CHECKED. AND SO I SIGNED
12 OFF ON THAT PRICE PAGE WHICH INDICATED 14.50 FOR
13 ALBUTEROL AND THAT IN TURN TRIGGERED ONE OF THE
14 MARKETING PERSONNEL TO INFORM THE FIRST DATABANK THAT
15 THE PRICE THAT HAD BEEN INCREASED WOULD HAVE -- SHOULD
16 BE CHANGED.

17 Q. OKAY. LET ME TALK TO YOU ABOUT THAT AND MAKE
18 SURE I UNDERSTAND WHAT YOU'RE TELLING ME. DECEMBER
19 1995, IS THAT THE MONTH WE ARE IN NOW?

20 A. YES, SIR.

21 Q. OKAY. AND YOU ARE TALKING ABOUT A DOCUMENT
22 THAT YOU ARE CALLING A PRICE PAGE; IS THAT CORRECT?

23 A. YES.

24 Q. WHAT IS A PRICE PAGE, PLEASE?

25 A. IT'S REALLY OUR -- OUR PUBLISHED PRICE PAGE

1 MARINE WORLD PARKWAY TO GO TO THIS RESTAURANT THAT YOU
2 DINED AT WITH MS. SELENATI SOMETIME IN 2000?

3 A. YES, I WOULD HAVE.

4 Q. YOU WOULD HAVE DONE THAT. OKAY.

5 A. YEAH.

6 Q. AND THAT'S APPROXIMATELY 50 MILES FROM YOUR
7 HOME?

8 A. YES, SIR.

9 Q. WHY WOULD YOU TRAVEL 50 MILES FROM YOUR HOME,
10 GO THAT FAR TO GO TO A RESTAURANT TO HAVE DINER WITH
11 MS. SELENATI OR MS. BURNHAM?

12 A. I DON'T KNOW WHETHER I MADE A SPECIFIC TRIP
13 TO SEE HER. I MAY HAVE BEEN IN THE AREA FOR SOME
14 OTHER BUSINESS, EITHER IN SAN FRANCISCO, OR IT'S EVEN
15 POSSIBLE I WAS EITHER GOING OR COMING ON A TRIP. I
16 DON'T RECALL THE EXACT CIRCUMSTANCES, BUT -- SO THAT'S
17 MY -- THAT'S MY BEST RECOLLECTION. IT -- IT WAS
18 LIKELY SOME OTHER REASONS I WAS IN THE AREA.

19 Q. ALL RIGHT. WELL, THE RESTAURANT IS CERTAINLY
20 NOT CONVENIENT TO YOUR HOME FOR DINING PURPOSES, IS
21 IT?

22 A. NO, SIR, IT'S NOT.

23 Q. SO WHY WOULD YOU BE -- WHY PICK THAT
24 PARTICULAR LOCATION FOR A RESTAURANT TO HAVE -- HAVE
25 DINNER AT? IT'S NOT CONVENIENT FOR YOU. WAS IT

1 CONVENIENT FOR MS. BURNHAM-SELENATI?

2 A. YES, I BELIEVE IT WAS.

3 Q. WHY WAS IT CONVENIENT FOR HER?

4 A. BECAUSE I BELIEVE SHE LIVED REASONABLY CLOSE
5 TO THAT RESTAURANT.

6 Q. AND WHEN YOU SAY "REASONABLY CLOSE,"
7 APPROXIMATELY HOW FAR?

8 A. PROBABLY A COUPLE OF MILES.

9 Q. COUPLE OF MILES.

10 A. SURE.

11 Q. AND DO YOU KNOW HOW TO GET -- OR AT LEAST IN
12 2000 WHEN YOU HAD DINNER WITH MS. SELENATI, FORMERLY
13 MS. BURNHAM, AT THIS RESTAURANT, DID YOU KNOW HOW TO
14 GET FROM THAT RESTAURANT TO HER HOME?

15 MR. HUDSPETH: OBJECTION, FORM.

16 A. I KNOW IT WAS IN THE VICINITY, BUT I -- I
17 PROBABLY COULDN'T HAVE ACTUALLY FOUND -- FOUND IT. IF
18 I RECALL, WE MET AT THE RESTAURANT --

19 Q. (BY MR. BREEN) OKAY.

20 A. -- NOT AT HER HOME.

21 Q. OKAY. YOU HAD NEVER BEEN TO HER HOME?

22 A. OH, YES, I HAD BEEN TO HER HOME.

23 Q. HOW MANY OCCASIONS HAVE YOU BEEN TO HER HOME?

24 A. I HAD BEEN TO HER HOME -- I CAN'T GIVE YOU
25 THE SPECIFIC NUMBER, BUT IT -- IT WOULD HAVE BEEN IN

1 THE -- YOU KNOW, '96 PERIOD, THE PERIOD AFTER SHE LEFT
2 DEY THROUGH '96, I DON'T KNOW, HALF A DOZEN TIMES
3 MAYBE, BUT -- BUT AFTER THAT PERIOD I -- I DID NOT GO
4 TO HER HOME.

5 Q. ALL RIGHT. SO YOU WENT TO HER HOME -- THIS
6 IS THE HOME NEAR THE RESTAURANT APPROXIMATELY SIX
7 MILES SOUTH OF SAN FRANCISCO AIRPORT --

8 A. YES.

9 Q. -- THAT YOU ARE TALKING ABOUT? OKAY. AND
10 YOU HAD GONE TO HER HOME APPROXIMATELY HALF A DOZEN
11 TIMES IN THE '96 TIME FRAME AFTER SHE LEFT DEY
12 LABORATORIES.

13 A. YES, MORE OR LESS.

14 Q. OKAY. AND DO YOU KNOW IF SHE RESIDED AT THAT
15 HOME DURING THE TIME THAT SHE ACTUALLY WORKED AT DEY
16 LABORATORIES?

17 A. YES. NO. EXCUSE ME. AT THE TIME SHE -- NO.
18 LET ME CORRECT THAT. AT THE TIME SHE LIVED -- WORKED
19 WITH DEY LABORATORIES SHE LIVED IN NAPA.

20 Q. IN NAPA.

21 A. YES. AND SHE -- AND SHE MOVED TO THAT
22 ADDRESS AFTER SHE LEFT DEY LABORATORIES.

23 Q. ALL RIGHT. DID YOU EVER VISIT MISS THEN
24 BURNHAM, NOW SELENATI'S HOME IN NAPA?

25 A. YES, I DID.

1 MR. BREEN: NO, HOME NEAR THE RESTAURANT

2 SIX TIMES.

3 MR. FLECKMAN: OKAY. GOT YOU.

4 Q. (BY MR. BREEN) ON EACH OCCASION THAT YOU
5 WENT TO THAT HOME NEAR THE RESTAURANT SIX TIMES,
6 APPROXIMATELY SIX TIMES, DID YOU DRIVE YOURSELF?

7 A. YES, SIR.

8 Q. OKAY. AND DID YOU HAVE ANYBODY IN THE CAR
9 WITH YOU TELLING YOU HOW TO GET TO HER HOUSE?

10 A. NO, SIR.

11 Q. OKAY. AND WHO GAVE YOU THE DIRECTIONS TO HER
12 HOUSE?

13 A. SHE DID.

14 Q. AND DID YOU EVER -- DID YOU HAVE HER PHONE
15 NUMBER WHEN YOU USED TO --

16 A. YES, I DID.

17 Q. -- WHEN YOU USED TO VISIT HER?

18 A. YES.

19 Q. OKAY. AND WHEN YOU HAD DINNER WITH HER
20 SOMETIME IN 2000 AT THIS RESTAURANT SOUTH OF SAN
21 FRANCISCO AIRPORT DID YOU HAVE HER PHONE NUMBER AT
22 THAT TIME?

23 A. YES, I WOULD HAVE -- I WOULD HAVE I BELIEVE
24 HAD HER PHONE NUMBER, WORK PHONE -- WORK PHONE NUMBER
25 IF SHE WAS STILL THERE. AND HER HOME, I WOULD HAVE

1 Q. (BY MR. BREEN) ARE YOU AWARE OF ANY -- ASIDE
2 FROM WHAT -- WHAT YOU MAY OR MAY NOT GLEAN FROM THE
3 EXHIBIT THAT I JUST SHOWED YOU TO, EXHIBIT 344, ARE
4 YOU AWARE OF ANY ACTIONS THAT RICK UPP TOOK ON BEHALF
5 OF DEY LABORATORIES THAT WERE NOT AUTHORIZED?

6 A. I'M NOT AWARE OF ANY.

7 Q. LET ME SHOW YOU WHAT WAS MARKED YESTERDAY
8 AS --

9 MR. BREEN: WELL, BEFORE WE DO THAT, CAN
10 YOU GO TO EXHIBIT 74, RAY?

11 MR. WINTER: (COMPLIES).

12 Q. (BY MR. BREEN) NOW, DO YOU RECALL BEING
13 ASKED ABOUT EXHIBIT 74 DURING YOUR -- YOUR LAST --
14 LAST DEPOSITION?

15 A. YES, SIR.

16 Q. AND TAKE A MOMENT TO THUMB THROUGH IT, BUT
17 YOU'LL SEE IN THERE AN AWP REIMBURSEMENT PROGRAM.

18 A. YES, SIR.

19 Q. AND YOU'LL SEE THERE THAT -- SOME FORMULAS
20 AND CALCULATIONS DONE TO CONVINCE GERIMED CUSTOMERS
21 THAT THEY SHOULD BUY DEY'S UNIT DOSE INSTEAD OF
22 WARRICK'S MULTIDOSE EVEN THOUGH DEY'S UNIT DOSE IS
23 MORE EXPENSIVE?

24 A. YES, SIR.

25 Q. AND -- AND -- AND THE -- AND THE PROPOSAL WAS

1 EXPLAINED TO THEM THAT DEY'S UNIT DOSE IS MORE
2 PROFITABLE BECAUSE OF -- ON REIMBURSEMENT, DO YOU
3 RECALL THAT?

4 A. YES, SIR.

5 Q. DO YOU RECALL TESTIFYING THAT YOU AGREE WITH
6 MR. RICE, THAT KIND OF MARKETING WAS NOT CONSISTENT
7 WITH DEY'S POLICY?

8 A. YES, SIR.

9 Q. IS THAT STILL YOUR TESTIMONY?

10 A. WE -- CLEARLY THERE HAVE BEEN SEVERAL
11 INSTANCES WHERE THIS OCCURRED AND AS WE'VE SEARCHED
12 THE DOCUMENTS THERE'S -- THERE'S BEEN SEVERAL
13 INSTANCES THAT THAT HAS -- HAS COME OUT. MOST OF
14 THOSE WERE PROPOSALS SUCH AS -- AS THIS PARTICULAR
15 DOCUMENT THAT WOULD HAVE GONE TO A -- A CONTRACTING
16 ANALYST AND SO NOT NECESSARILY WOULD I HAVE SEEN THESE
17 AT THE TIME THAT YOU ASKED ME THOSE -- YOU KNOW, AT
18 THE TIME THAT THEY WERE DONE.

19 Q. OKAY.

20 A. SO YES.

21 Q. OKAY. SO THIS IS THE KIND OF THING THAT WENT
22 TO A DEY CONTRACT ANALYSIS, RIGHT?

23 A. THAT'S CORRECT.

24 Q. ALL RIGHT. AND SO YOU'RE NOT AWARE OF ANY
25 INFORMATION THAT WOULD INDICATE TO YOU THAT DEY

1 SALESPEOPLE ACTUALLY WERE PERMITTED TO MAKE SALES
2 PITCHES CONTAINING THE SAME KIND OF INFORMATION TO
3 ACTUAL DEY CUSTOMERS, ARE YOU?

4 A. WELL, UPON RESEARCHING THE DOCUMENTS I
5 HAVE -- IT'S COME TO MY ATTENTION THAT THERE WAS SOME
6 OF THESE PRESENTATIONS BEING DONE IN OR ABOUT 1995,
7 '96.

8 Q. AND THEY WEREN'T AUTHORIZED, WERE THEY?

9 A. I WAS NOT AWARE OF THEM AT THE TIME.

10 Q. AND IF -- IF -- SO IF MR. UPP WERE GOING
11 AROUND THE COUNTRY TELLING HIS SALESPEOPLE TO MAKE
12 THESE KIND OF PRESENTATIONS TO CUSTOMERS, THAT WAS
13 WITHOUT YOUR KNOWLEDGE, WASN'T IT?

14 A. IT WAS NOT -- I WAS NOT AWARE OF MR. UHL
15 DOING THAT, YES.

16 Q. MISTER WHO?

17 A. MR. UHL. RUSS UHL.

18 Q. ALL RIGHT. BUT MY QUESTION, IF MR. UPP,
19 THE -- A REGIONAL SALES MANAGER --

20 A. OH, MR. UPP.

21 Q. -- WERE GOING AROUND THE COUNTRY TELLING HIS
22 SALESPEOPLE TO MAKE PRESENTATIONS TO DEY'S CUSTOMERS
23 USING THE SAME MARKETING TECHNIQUE TRYING TO CONVINCE
24 THE CUSTOMER TO BUY THE MORE EXPENSIVE DEY UNIT DOSE
25 BECAUSE IT WAS MORE PROFITABLE THAN THE CHEAPER

1 WARRICK MULTIDOSE, THAT WAS WITHOUT YOUR KNOWLEDGE,
2 WASN'T IT?

3 A. I HAVE A VAGUE RECOLLECTION OF SOME OF THAT
4 GOING ON AT -- SOME OF OUR REPS CLEARLY DID DISCUSS
5 REIMBURSEMENTS TO SOME OF OUR CUSTOMERS DURING THAT
6 PERIOD OF TIME.

7 Q. BUT THAT WASN'T AUTHORIZED BY YOU, WAS IT?

8 A. I WAS NOT AWARE OF THE EXTENT THAT IT WAS
9 BEING DONE DURING THAT PERIOD OF TIME.

10 Q. YOU WEREN'T AWARE OF THE EXTENT THAT IT WAS
11 BEING DONE?

12 A. RIGHT. I HAD SEEN SOME FORMS, BUT I DIDN'T
13 REALIZE THAT THEY HAD ACTUALLY BEEN IMPLEMENTED.

14 Q. YOU NEVER AUTHORIZED THOSE FORMS, DID YOU?

15 A. I DIDN'T -- I DIDN'T AUTHORIZE THEM, NO.

16 Q. AND YOU DIDN'T AUTHORIZE ANYBODY ELSE TO
17 AUTHORIZE THEM, DID YOU?

18 A. NOT TO MY RECOLLECT -- RECOLLECTION.

19 Q. AND IT WAS YOUR INTENTION AT THE TIME THAT
20 THEY SHOULD NOT BE AUTHORIZED, WASN'T IT?

21 A. IF I HAD KNOWN THE DOCUMENTS THAT I'VE SEEN I
22 CERTAINLY WOULD HAVE DONE SOMETHING ABOUT IT AT THE
23 TIME.

24 Q. BECAUSE IT WAS YOUR POLICY AS THE EXECUTIVE
25 VICE PRESIDENT OF SALES AND MARKETING THAT YOUR PEOPLE

1 WERE NOT SUPPOSED TO BE ENGAGING IN THAT KIND OF
2 MARKETING, WERE THEY?

3 A. THAT WAS MY UNDERSTANDING AT THE TIME.

4 Q. AND -- AND -- AND YOU GAVE YOUR SUBORDINATES
5 INSTRUCTIONS NOT TO ENGAGE IN THAT KIND OF MARKETING,
6 DIDN'T YOU?

7 A. I DON'T REMEMBER ANY SPECIFIC INSTRUCTIONS
8 THAT I GAVE THEM FOR OR AGAINST IT, BUT CLEARLY THERE
9 WAS SOME DISCUSSION OF SPREAD, PARTICULARLY WHEN IT
10 CAME TO MULTIDOSE VERSUS UNIT DOSE BY SOME OF OUR
11 SALES REPRESENTATIVES DURING THE PERIOD OF '95 AND
12 EARLY '96 AT LEAST.

13 Q. AND WHEN YOU SAY DISCUSSION OF THE SPREAD,
14 YOU MEAN USING THE GREATER SPREAD ON REIMBURSEMENT ON
15 DEY'S PRODUCT IN ORDER TO MARKET THE PRODUCT, CORRECT?

16 A. THE DISCUSSION OF THE REIMBURSEMENT
17 DIFFERENCES BETWEEN UNIT DOSE AND MULTIDOSE, THAT'S
18 WHAT I'M REFERRING TO.

19 Q. ARE YOU REFERRING TO THE DISCUSSION AS IT
20 RELATED TO USING THE GREATER REIMBURSEMENT SPREAD ON
21 DEY'S MULTIDOSE AS A MARKETING TOOL?

22 A. NOT ON MULTIDOSE.

23 Q. I'M SORRY, ON THE UNIT DOSE?

24 A. ON THE UNIT DOSE.

25 Q. OKAY. NOW, IF YOU DIDN'T AUTHORIZE THAT KIND